

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHANE BEARD, et al.,

Plaintiffs,

v.

COUNTY OF STANISLAUS, et al.,

Defendants.

Case No. 1:21-cv-00841-DAD-SAB

ORDER ENTERING STIPULATED
PROTECTIVE ORDER

(ECF No. 22)

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting and defending this litigation may be warranted.

Previously, documents from juvenile dependency proceedings involving one or more of the parties hereto have in fact been provided to one or more of the parties in this matter by an order of the Superior Court of the County of Stanislaus, and are presumptively confidential.

1 Accordingly, with regard to the documents from said juvenile dependency proceedings,
2 and any other documents/evidence or information which is confidential, proprietary, or private
3 information for which special protection from public disclosure and from use for any purpose
4 other than prosecuting and defending this litigation may be warranted, the parties do hereby
5 stipulate to and petition the court to enter the following Stipulated Protective Order.

6 The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential
9 treatment under the applicable legal principles, and that the burden of proof in the event of a
10 dispute shall be on the party seeking to designate documents/evidence or items as confidential.

11 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
12 Protective Order does not entitle them to file confidential information under seal; the Local
13 Rules of this Court set forth the procedures that must be followed and the standards that will
14 be applied when a party seeks permission from the court to file material under seal and nothing
15 in this Order preempts that procedure.

16 **2. DEFINITIONS**

17 **2.1 Challenging Party:** a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 **2.2 “CONFIDENTIAL” Information or Items:** information (regardless of how it is
20 generated, stored or maintained) or tangible things that qualify for protection under Federal
21 Rule of Civil Procedure 26(c).

22 **2.3 Counsel (without qualifier):** Outside Counsel of Record and House Counsel (as
23 well as their support staff).

24 **2.4 Designating Party:** a Party or Non-Party that designates information or items that it
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

26 **2.5 Disclosure or Discovery Material:** all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including, among other
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1 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
2 or responses to discovery in this matter.

3 **2.6 Expert:** a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
5 a consultant in this action.

6 **2.7 House Counsel:** attorneys who are employees of a party to this action. House
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 **2.8 Non-Party:** any natural person, partnership, corporation, association, or other legal
9 entity not named as a Party to this action.

10 **2.9 Outside Counsel of Record:** attorneys who are not employees of a party to this
11 action but are retained to represent or advise a party to this action and have appeared in this
12 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
13 that party.

14 **2.10 Party:** any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 **2.11 Producing Party:** a Party or Non-Party that produces Disclosure or Discovery
17 Material in this action.

18 **2.12 Professional Vendors:** persons or entities that provide litigation support services
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
20 organizing, storing, or retrieving data in any form or medium) and their employees and
21 subcontractors.

22 **2.13 Protected Material:** any Disclosure or Discovery Material that is designated as
23 “CONFIDENTIAL.”

24 **2.14 Receiving Party:** a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only Protected
28 Material (as defined above), but also (1) any information copied or extracted from Protected

1 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)
2 any testimony, conversations, or presentations by Parties or their Counsel that might reveal
3 Protected Material.

4 However, the protections conferred by this Stipulation and Order do not cover the
5 following information: (a) any information that is in the public domain at the time of
6 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
7 Receiving Party as a result of publication not involving a violation of this Order, including
8 becoming part of the public record through trial or otherwise; and (b) any information known
9 to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
10 disclosure from a source who obtained the information lawfully and under no obligation of
11 confidentiality to the Designating Party. Any use of Protected Material at trial shall be
12 governed by a separate agreement or order.

13 **4. DURATION**

14 Even after final disposition of this litigation, the confidentiality obligations imposed by
15 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
16 court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal
17 of all claims and defenses in this action, with or without prejudice; and (2) final judgment
18 herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
19 reviews of this action, including the time limits for filing any motions or applications for
20 extension of time pursuant to applicable law.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
23 Party or Non-Party that designates information or items for protection under this Order must
24 take care to limit any such designation to specific material that qualifies under the appropriate
25 standards. The Designating Party must designate for protection only those parts of material,
26 documents, items, or oral or written communications that qualify – so that other portions of the
27 material, documents, items, or communications for which protection is not warranted are not
28 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized

1 designations are prohibited. Designations that are shown to be clearly unjustified or that have
2 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
3 development process or to impose unnecessary expenses and burdens on other parties) expose
4 the Designating Party to sanctions. If it comes to a Designating Party's attention that
5 information or items that it designated for protection do not qualify for protection, that
6 Designating Party must promptly notify all other Parties that it is withdrawing the mistaken
7 designation.

8 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order (see,
9 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
10 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly
11 so designated before the material is disclosed or produced. Designation in conformity with this
12 Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents, but
14 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
15 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If
16 only a portion or portions of the material on a page qualifies for protection, the Producing
17 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings
18 in the margins). A Party or Non-Party that makes original documents or materials available for
19 inspection need not designate them for protection until after the inspecting Party has indicated
20 which material it would like copied and produced.

21 During the inspection and before the designation, all of the material made available for
22 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the
23 documents it wants copied and produced, the Producing Party must determine which
24 documents, or portions thereof, qualify for protection under this Order. Then, before producing
25 the specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to
26 each page that contains Protected Material. If only a portion or portions of the material on a
27 page qualifies for protection, the Producing Party also must clearly identify the protected
28 portion(s) (e.g., by making appropriate markings in the margins).

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
2 Designating Party identify on the record, before the close of the deposition, hearing, or other
3 proceeding, all protected testimony.

4 (c) for information produced in some form other than documentary and for any other
5 tangible items, that the Producing Party affix in a prominent place on the exterior of the
6 container or containers in which the information or item is stored the legend
7 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
8 protection, the Producing Party, to the extent practicable, shall identify the protected
9 portion(s).

10 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to designate
11 qualified information or items does not, standing alone, waive the Designating Party’s right to
12 secure protection under this Order for such material. Upon timely correction of a designation,
13 the Receiving Party must make reasonable efforts to assure that the material is treated in
14 accordance with the provisions of this Order.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
19 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the
21 original designation is disclosed.

22 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute resolution process by
23 providing written notice of each designation it is challenging and describing the basis for each
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
25 must recite that the challenge to confidentiality is being made in accordance with this specific
26 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good
27 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms
28 of communication are not sufficient) within 14 days of the date of service of notice. In

1 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
2 designation was not proper and must give the Designating Party an opportunity to review the
3 designated material, to reconsider the circumstances, and, if no change in designation is
4 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
5 the next stage of the challenge process only if it has engaged in this meet and confer process
6 first or establishes that the Designating Party is unwilling to participate in the meet and confer
7 process in a timely manner.

8 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without court intervention,
9 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local
10 Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
11 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
12 process will not resolve their dispute, whichever is earlier. Each such motion must be
13 accompanied by a competent declaration affirming that the movant has complied with the meet
14 and confer requirements imposed in the preceding paragraph.

15 Failure by the Designating Party to make such a motion including the required
16 declaration within 21 days (or 14 days, if applicable) shall automatically waive the
17 confidentiality designation for each challenged designation. In addition, the Challenging Party
18 may file a motion challenging a confidentiality designation at any time if there is good cause
19 for doing so, including a challenge to the designation of a deposition transcript or any portions
20 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
21 declaration affirming that the movant has complied with the meet and confer requirements
22 imposed by the preceding paragraph. The burden of persuasion in any such challenge
23 proceeding shall be on the Designating Party. Frivolous challenges, and those made for an
24 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions.

26 Unless the Designating Party has waived the confidentiality designation by failing to file
27 a motion to retain confidentiality as described above, all parties shall continue to afford the

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1 material in question the level of protection to which it is entitled under the Producing Party's
2 designation until the court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed
7 only to the categories of persons and under the conditions described in this Order. When the
8 litigation has been terminated, a Receiving Party must comply with the provisions of section
9 13 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a
10 Receiving Party at a location and in a secure manner that ensures that access is limited to the
11 persons authorized under this Order.

12 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise ordered by
13 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
14 information or item designated "CONFIDENTIAL" only to:

15 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
16 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
17 information for this litigation and who have signed the "Acknowledgment and Agreement to
18 Be Bound" that is attached hereto as Exhibit A;

19 (b) the officers, directors, and employees (including House Counsel) of the
20 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
21 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
23 reasonably necessary for this litigation and who have signed the "Acknowledgment and
24 Agreement
25 to Be Bound" (Exhibit A);

26 (d) the court and its personnel;

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1 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
5 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
6 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must
8 be separately bound by the court reporter and may not be disclosed to anyone except as
9 permitted under this Stipulated Protective Order.

10 (g) the author or recipient of a document containing the information or a custodian or
11 other person who otherwise possessed or knew the information.

12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
13 **OTHER LITIGATION**

14 If a Party is served with a subpoena or a court order issued in other litigation that
15 compels disclosure of any information or items designated in this action as
16 “CONFIDENTIAL,” that Party must:

17 (a) promptly notify in writing the Designating Party. Such notification shall include a
18 copy of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
20 other litigation that some or all of the material covered by the subpoena or order is subject to
21 this Protective Order. Such notification shall include a copy of this Stipulated Protective
22 Order; and

23 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
24 Designating Party whose Protected Material may be affected. If the Designating Party timely
25 seeks a protective order, the Party served with the subpoena or court order shall not produce
26 any information designated in this action as “CONFIDENTIAL” before a determination by the
27 court from which the subpoena or order issued, unless the Party has obtained the Designating
28 Party’s permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material – and nothing in these provisions should be
2 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
3 directive from another court.

4 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
5 **THIS LITIGATION**

6 (a) The terms of this Order are applicable to information produced by a Non-Party in this
7 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
8 connection with this litigation is protected by the remedies and relief provided by this Order.
9 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
10 additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
12 Party’s confidential information in its possession, and the Party is subject to an agreement with
13 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
15 all of the information requested is subject to a confidentiality agreement with a
16 Non-Party;

17 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
18 in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and,

20 (3) make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court within 14
22 days of receiving the notice and accompanying information, the Receiving Party may produce
23 the Non-Party’s confidential information responsive to the discovery request. If the Non-Party
24 timely seeks a protective order, the Receiving Party shall not produce any information in its
25 possession or control that is subject to the confidentiality agreement with the Non-Party before
26 a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
27 burden and expense of seeking protection in this court of its Protected Material.

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10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

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12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

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COURT ORDER ENTERING STIPULATED PROTECTIVE ORDER

Pursuant to the stipulation of the parties and good cause appearing, IT IS HEREBY ORDERED that:

1. The above stipulated protective order is ENTERED;
2. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141;
3. The party making a request to file documents under seal shall be required to show either good cause or compelling reasons to seal the documents, depending on the type of filing, Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 677–78 (9th Cir. 2009); Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1101 (9th Cir. 2016); and
4. If a party's request to file Protected Material under seal is denied by the Court, then the previously filed material shall be immediately accepted by the court and become information in the public record and the information will be deemed filed as of the date that the request to file the Protected Information under seal was made.

IT IS SO ORDERED.

Dated: March 30, 2022


UNITED STATES MAGISTRATE JUDGE